IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 23577 of 2004

Between:

1.Nomula Mohan Reddy, S/o. Raji Reddy, Dharmasagar

Village & Mandal, Warangal District.
2.Nomula Ramulamma, @ Kamala w/o. Mohan Reddy,
Dharmasagar Village & Mandal, Warangal District.

..... PETITIONERS

AND

1.Sub-Inspector of Police, Subedari Police Station, Wargnal.
2.Madadi Chithra Devi, W/o. Late Satyanarayana Reddy,
R/o. 1-7-203, Pragathinagar, Revenue Colony, Hanamkonda, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to First Information Report in Cr.No.717/2004 of Subedari Police Station registered by the Sub-Inspector of Police, Subedari Police Station against the petitioners and quash the same holding it a bad, illegal and without jurisdiction and pass such other order or orders as deem fit and proper.

Counsel for the Petitioners: MR.P.PRABHAKAR REDDY

Counsel for the Respondent No.1: GP FOR HOME

Counsel for the Respondent No.2: None appears

The Court made the following:

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The Honourable Sri Justice D.S.R.Varma

W.P.No.23577 of 2004

Order:-

Petitioners invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a writ of Certiorari to call for the records relating to F.I.R. in Crime No.717 of 2004 of Subedari Police Station, Warangal, registered against them by the first respondent and to quash the same, on various grounds.

Necessary facts, for disposal of this writ petition, are required to be noticed.

The daughter of the second respondent by name Sirisha was given in marriage to the son of the petitioners herein by name Srinivasa Reddy on 29.6.1997. The said marriage was performed at Hanmakonda, Warangal District. Sirisha appears to have joined the company of Srinivasa Reddy at the U.S.A in the year 1999 and both of them lived together happily till July,2004. Thereafter, it appears, due to some reason or the other, Srinivasareddy and Sirisha are residing separately in the U.S.A. At present, it appears that Sirisha is residing at Pittsburg in the U.S.A. with her relatives.

It appears that in the last week of November,2004, the 2nd respondent herein lodged a private complaint against her son-in-law and the petitioners herein (who are the father-in-law and mother-in-law of Sirisha, i.e, the daughter of the second respondent), before the IV Additional Judicial First Class Magistrate, Warangal, for the offences punishable under Section 498-A I.P.C and under Sections 3 and 4 of Dowry Prohibition Act alleging that the petitioners herein and their son harassed her daughter Sirisha in the U.S.A, both mentally and physically, by demanding her to bring additional dowry .

The learned IV Additional Judicial First Class Magistrate, Warangal, appears to have referred the complaint of the 2nd respondent to the first respondent-Sub Inspector of Police, Subedari Police Station, Warangal, under Section 156(3) Cr.P.C for investigation. Thereupon, the first respondent registered the complaint as F.I.R in Crime No.717 of 2004 of his police station. It is that F.I.R that is sought to be quashed by the petitioners in the present writ petition.

On 20.12.2004,when this writ petition came up for admission, my learned Brother Justice L.Narasimha Reddy, while ordering notice before admission, passed the following order:

"Notice before admission.

Learned Counsel for the petitioners is permitted to take out personal notice to respondents and file proof of service.

Prima facie, it is evident that even according to the entire complaint, the incident is said to have taken place in the United States. It needs to be examined as to whether the investigation can be undertaken by an agency in India as regards an incident, which has taken place outside the country.

Hence, there shall be interim stay of further proceedings in pursuance of CrimeNo.717 of 2004, for as period of six weeks.

Post after two weeks".

The first respondent filed counter-affidavit stating, inter alia, that F.I.R in Cr.No.717 of 2004 is registered and the case is being investigated solely on the basis the order of the IV Additional Judicial First Class Magistrate, Warangal, passed under Section 156(3) Cr.P.C and if at all the petitioners have got any grievance about the jurisdictional aspect, they can as well agitate the same before the learned Magistrate.

Despite service of notice, none appears for the second respondent and there is no representation made on behalf of the second respondent.

Having heard the learned Counsel for the petitioners and the learned Government Pleader for Home, appearing for the first respondent, I have perused the material on record.

The petitioners are the parents of one Nomula Srinivas Reddy, who the son-in-law of the 2nd respondent-defacto complainant. Through judicial process in the U.S.A, the daughter and son-in-law of the second respondent separated themselves somewhere in April/May 2004 and since then they have been living separately in the U.S.A. Separation agreement was entered into by the daughter and son-in-law of the 2nd respondent on 24th April 2004 and the same was filed in the Court of Fulton Country, State of Georgia in the U.S.A and a final judgment and decree was rendered by that Court on 2nd July,2004 dissolving the

marriage between the daughter and son-in-law of the 2nd respondent while making the said 'separation agreement' as part of record.

Therefore, as could be seen from the final judgment and decree, dated 2nd July 2004, passed by the Court of Fulton Country, State of Georgia, (Civil Action File No. 2004 CV 8668) the daughter and son-in-law of the second respondent, shall be considered as separate and distinct persons altogether unconnected by any nuptial or civil contract whatsoever and both shall have the right to remarry.

The material placed before this court by the petitioners remained uncontroverted as the second respondent did not enter appearance either in person or through her Counsel, despite service of notice in this writ petition, and contest the writ petition.

The daughter and son-in-law of the 2nd respondent obtained divorce and have been living separately in the U.S.A since April 2004 and a decree has been passed by the Court of Fulton Country, State of Georgia on 2nd July 2004. Quite obviously, the private complaint was lodged by the 2nd respondent before the Magistrate at Warangal in the month of November, 2004 against the petitioners and their son for the offences under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act and the same was referred by the Magistrate under Section 156(3) Cr.P.C to the first respondent for investigation. Hence, it is crystal clear that the private complaint had been lodged by the 2nd respondent much subsequent to the ending up of internal feuds between the daughter and son-in-law of the 2nd respondent in a consent divorce decree through judicial process in the U.S.A. Therefore, lodging of the present private complaint by the 2nd respondent before the Magistrate, which culminated in reference of the same by the Magistrate under Section 156(3) Cr.P.C to the first respondent, prima facie, is nothing but abuse of process of law.

It is settled law that while dealings with complaints lodged against the parents of a person (husband) under Section 498-A I.P.C the Courts should examine the assess the situation more carefully since it is quite common that while ventilating the grievance of the lady (wife), there is every scope for emotional roping in of the parents and close relatives of her husband eventhough they are not at all really at fault. In order to avoid such a situation, it is imperative for the Magistrates to examine such issues with more diligence.

Having regard to the facts and circumstances of the present case and particularly in view of the fact that the complaint itself had been lodged by the 2nd respondent much after

the couple having got separated through judicial process in the U.S.A, I am of the considered view that the complaint and investigation pursuant to the orders of the Magistrate under Section 156(3) Cr.P.C are totally superfluous. In other words, the attitude or conduct of the 2nd respondent in lodging the complaint against the petitioners, in my considered view, prima facie, is in total abuse of process of law and motivated.

Further, it is to be seen that the offences under Section 498-A IPC and under Sections 3 and 4 of the Dowry Prohibition Act are alleged to have been committed by the petitioners and their son in the U.S.A. In such a case, it is yet another question as to whether such offences can be inquired into and tried in India.

In this context, the mandatory provisions of Section 188 Cr.P.C are required to be noticed, which run thus:

"**188. Offence committed outside India:-** When an offence is committed outside India:-

a. by a citizen of India, whether on the high seas or elsewhere, or

b. by any person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found;

Provided that, notwithstanding anything in any of preceding Sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government".

Even assuming that the complaint lodged by the 2nd respondent is of some substance, from the proviso to Section 188 Cr.P.C, it is manifest that the offences under Section 498-A IPC and under Section 3 and 4 of Dowry Prohibition Act, alleged to have been committed by the petitioners and their son, cannot be inquired into or tried in India without the previous sanction of the Central Government. In this case, obviously, no such prior sanction was obtained. It is not even the case of the first respondent in the counter-affidavit filed by him that such prior sanction of the Central Government is obtained in this case. On this ground also, the F.I.R and the consequential proceedings are liable to be quashed, apart from the merits of the case referred to above.

For the foregoing reasons, this writ petition is allowed as prayed at the admission stage. The First Information Report in Cr.No.717 of 2004 of Subedari Police Station, Warangal, registered against the petitioners and all subsequent proceedings initiated thereunder are hereby quashed. A Writ of Certiorari shall issue accordingly. No costs.

D.S.R.VARMA,J

13TH April, 2005

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To:

1.Sub-Inspector of Police, Subedari Police Station, Wargnal.
2.Two CCs to the Government Pleader for Home, High Court Buildings, Hyderabad (OUT).

3.Two CD copies.

The Hon'ble Sri Justice D.S.R.Varma

W.P.No.23577 of 2004

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